IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5106 of 2001

to

FIRST APPEALNo 5120 of 2001

with

CROSS OBJECTION No 6 to 20 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SPL.LAQ OFFICER

Versus

RABARI CHHAGANBHAI VISABHAI

Appearance:

1. First Appeal No. 5106 of 2001
   MR. S.P. SEN,GOVERNMENT PLEADER for Petitioners No. 1-2
   MR AJ PATEL for Respondent No. 1
2. CROSS OBJECTION No. 6 of 2002
   MR AJ PATEL for Petitioner No. 1

MR. S.P. SEN,GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE N.G.NANDI

Date of decision: 23/01/2002

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. All these appeals are arising out of common judgment & award passed by Learned Assistant Judge, Mehsana dated 30-9-2000 in Land Acquisition Reference Nos. 2525 to 2539 of 1996 (Main L.A.R. No. 2525 of 1996); therefore, they are disposed of by this common order.

2. For Narmada Canal Project, Viramgam Branch, lands situated at village Khanhdmorva, taluka Kadi, District Mehsana were sought to be acquired. For that, section 4 notification was issued on 11-11-1994. Claimants in all the cases claimed Rs.30-00 per sq. meter but the Land Acquisition Officer by his award dated 29-2-1996 only awarded Rs.2.25 per sq. meter. In references made by the claimants before the Reference Court, Learned Judge granted additional amount of Rs.19-75 in addition to Rs.2.25 per sq. meter awarded by Land Acquisition Officer. Thus in all Rs.22-00 per sq. meter was awarded per sq. meter by the impugned judgment & award passed by Learned Judge. Said common judgment & award has been challenged in all the aforesaid appeals by the Special Land Acquisition Officer, Narmada Canal Project, Mehsana and Executive Engineer, Construction Section,Narmada Canal Scheme, Mehsana.

3. All these appeals were admitted on 10-12-2001 by the Division Bench of this Court and learned counsel Shri. A.J. Patel appearing for respondents- claimants waived service of notice in all the cases. On the joint request made by learned counsel for the parties, all these appeals were ordered to be placed for final hearing on 20-12-2001. However, on 20-12-2001 it was kept on 16-1-2002. On 16-1-2002 all the matters were partly heard by us and it was kept today. With the admission of the appeals in all the cases, respondents-claimants filed aforesaid cross-objections, therefore, these appeals and cross-objections are required to be disposed of by this common judgment & order.

4. Learned AGP Shri. Sen for the appellants vehemently submitted that, learned Judge committed grave error in awarding additional amount of Rs.19-75 per sq. meter to all the claimants. He submitted that, learned Judge himself in para-17 of his judgment came to the conclusion that, as per the yield method, annual return of the land would come to Rs.22,000/- to 25,000/- per year which comes to Rs.8.50 per sq. meter and not more. Inspite of that, he has awarded additional amount of Rs.19-75 and in all Rs.22-00 per sq. meter . He therefore submitted that, these appeals are required to be partly allowed and the respondents-claimants should be awarded only Rs.8-50 per sq. meter as per the findings arrived at by the learned Judge himself.

5. Mr. Sen has also strongly criticized judgment of the learned Judge that, learned Judge awarded in all Rs. 22-00 per sq. meter by observing that the handkerchief of an ordinary quality would cost Rs.20-00, whereas in the case on hand the claimants lost their valuable piece of land against their desire. He submitted that, this cannot be said to be a reasoning at all.

6. However, Mr. A.B. Munshi, learned counsel for Shri. A.J. Patel appearing for the respondentsclaimants in all these appeals and cross-objections vehemently submitted that, learned Judge wrongly discarded the judgments produced at Exhibit - 22 to 28 and 37 cited before him of Kasva and adjoining village whereby the land owners of those villages were awarded Rs.26-70 and Rs.28-00 per sq. meter respectively. Said villages are adjoining to the village Khandmorva where lands of the claimants were situated. However learned AGP Shri. Sen vehemently submitted that learned Judge has rightly not relied upon those judgments because after considering the map exhibit-44 he came to he conclusion that all the villages stated i.e. Kasva, Sedaradi, Vidaj, Khandmorva are at a distant places, therefore they cannot be called nearby or adjacent to the lands involved in the group matter before him. He submitted that learned judge has himself considered and compared the map in question, therefore this Court should not take a different view of the matter.

7. It may be stated that, the map at exhibit-44 was produced on record in evidence of witness Prahladbhai Jivabhai Patel, who is none else but Assistant Engineer of the department (exhibit-40). He has been effectively cross examined by the claimants. In his cross examination he has stated that village Sedaradi, Baldi

and Kasva are adjoining to the boundary of village Khandmorva. There is distance of hardly 3 k.m. between Khandmorva and Vidaj. He has admitted in his cross examination that village Kasva and Vidal are adjacent to each other and land acquired of village Kasva for Narmada Canal, the award has come wherein Rs.28-70 per sq. meter has been awarded by the Reference Court, which has been accepted by the State Government. In that view of the matter, we are of the considered opinion that learned Judge was wrong in coming to the conclusion that the lands of village Khandmorva was at a far distant place. For lands of village Kasva Rs.28-70 per sq. meter was awarded, which were acquired under Notification dated 6-7-1992, then, in our considered opinion the claimants were entitled for atleast Rs.28-70 if not more for their lands which were acquired under Notification dated 11-11-1994. In that view of the matter, the findings recorded by learned Judge regarding Rs.8-70 sq. meter as per yield method will be of without any consequence.

8. In view of the above observations all the appeals filed by the appellants are required to be dismissed, whereas the cross-objections filed by the respondents-claimants demanding Rs.30-00 per sq. meter are to be partly allowed. It is accordingly ordered that the respondents-claimants are entitled for Rs.28-70 per sq.meter. They have been paid Rs.22-00 per sq. meter, therefore the appellants will have to pay additional compensation to the claimants at the rate of Rs.6-70 per sq. meter over & above the compensation already awarded by the Reference Court.

9. The appellants shall have to pay an additional amount of compensation at the rate of 12 % per annum on the additional amount of compensation awarded to the claimants under section 23 (1-A) of the Land Acquisition Act.

10. The Reference Court has awarded solatium at the rate of 30 % on the additional amount of compensation under section 23 (2) of the Land Acquisition Act, but it has not awarded any interest on it. As per the judgment of the Constitutional Bench of the Hon'ble Supreme Court in case of SUNDER VS. UNION OF INDIA, reported in 2001 (3) GLH, pg 446, the claimants are also entitled for the interest on solatium, as well under Section 28 of the Act. Therefore the appellants shall also have to pay interest over the solatium under section 28 of the Act.

11. The appellants shall also have to pay interest on the additional compensation awarded by this Court at the

rate of 9 % per annum from the date of taking possession or from the date of issuing Notification under Section 4 of the Act, whichever is earlier for the first year, and thereafter at the rate of 15 % per annum till realisation of the amount payable under Section 28 of the Act.

12. The appellants shall also pay proportionate cost to the respondents-claimants and shall bear their own costs in all these appeals. However, there shall be no order as to cost in the cross-objections.

13. In view of the judgment of the Constitutional Bench of the Hon'ble Supreme Court in case of Sunder (supra), the claimants are entitled to get the interest on the amount awarded under Section 23 (2) and Section 23 (1-A) of the Land Acquisition Act, and also entitled to get 12 % towards difference on the amount so awarded under Section 23 (2) and under Section 23 (1-A) of the Land Acquisition Act.

14. Accordingly all the appeals are dismissed with costs, and the cross-objections filed by respondents-claimants are partly allowed, with no order as to costs.

Dt: 23-1-2002 (B.J. Shethna, J)

(N.G. Nandi, J)

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